

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

STEVEN DIAZ, No. CIV S-05-0376-MCE-CMK-P

Petitioner,

## ORDER

DERRAL ADAMS,

### Respondent.

Petitioner, a state prisoner proceeding with appointed counsel, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court are petitioner's pro se petition for a writ of habeas corpus (Doc. 1), filed on February 25, 2005, respondent's answer (Doc. 14), filed on December 15, 2005, and petitioner's reply (Docs. 24 and 25), filed by appointed counsel on March 27, 2006.

In his traverse, petitioner states that, at a minimum, an evidentiary hearing is required on the issue of trial counsel's performance with respect to DNA testing of the forensic evidence. By this order, respondent is hereby directed to file a response to petitioner's request for an evidentiary hearing. Respondent should also address whether the court should grant leave to take trial counsel's deposition prior to, or in lieu of, an evidentiary hearing and the potential

1 effect of a claim of attorney-client privilege on the issues presented in this case. Petitioner will  
2 be given an opportunity to reply to respondent's response.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Within 30 days of the date of this order, respondent shall file a brief  
5 addressing: (a) petitioner's request for an evidentiary hearing on the issue of trial counsel's  
6 performance; (b) whether the court should grant leave to take trial counsel's deposition; and  
7 (c) the effect of attorney-client privilege; and

8 2. Petitioner may file a reply brief within 15 days after the date of service of  
9 respondent's brief.

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11 DATED: October 19, 2007

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13 CRAIG M. KELLISON  
14 UNITED STATES MAGISTRATE JUDGE  
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